

1 HONORABLE MARSHA J. PECHMAN
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8 UNITED STATES DISTRICT COURT
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10 WESTERN DISTRICT OF WASHINGTON
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12 AT SEATTLE

13 INTERVAL LICENSING LLC,

14 Plaintiff,

15 v.
16 AOL, INC., et al.,
17 Defendants.

Case No. No. 2:10-cv-01385-MJP
DEFENDANT FACEBOOK, INC.'S JOINDER
IN DEFENDANTS GOOGLE INC. AND
YOUTUBE, LLC'S MOTION TO DISMISS
OR SEVER FOR MISJOINDER PURSUANT
TO FED. R. CIV. P. 20 AND 21

NOTED ON MOTION CALENDAR:
November 12, 2010

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19 **I. INTRODUCTION AND RELIEF REQUESTED**

20 Defendant Facebook Inc. ("Facebook") respectfully joins in Defendants Google Inc. and
21 YouTube, LLC's Motion to Dismiss or Sever for Misjoinder Pursuant to Fed. R. Civ. P. 20 and
22 21 ("Google's Motion to Sever"). (D.I. 63) As set forth in Google's Motion to Sever, Plaintiff
23 Interval Licensing LLC ("Interval") has joined eleven unrelated entities in a single action for
24 patent infringement without alleging any coordinated action between them or any right to relief
25 that arises out of "the same transaction, occurrence, or series of transactions or occurrences."
26 Fed. R. Civ. P. 20(a)(2)(A). Facebook should therefore be dropped from the instant action, or the
27 claim against it should be severed.

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DEFENDANT FACEBOOK, INC.'S JOINDER IN
GOOGLE'S MOTION TO DISMISS OR SEVER
2:10 -cv-01385-MJP

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II. ARGUMENT

Under Federal Rule of Civil Procedure (“Rule”) 20, a plaintiff cannot join multiple defendants unless two requirements are satisfied: transactional relatedness and commonality. FED. R. CIV. P. 20(a)(2); *see Bravado Int’l Grp. Merch. Servs. v. Cha*, No. 09-9066 PSG (CWx), 2010 WL 2650432, at *1 (C.D. Cal. June 30, 2010). Here, no such transactional relatedness exists, because the claims asserted against the other defendants have insufficient factual commonality with the single claim asserted against Facebook to be found to arise out of the same transaction. *See, e.g., WiAV Networks, LLC v. 3Com Corp.*, No. 10-3448 WHA, 2010 WL 3895047, at *3–4 (N.D. Cal. Oct. 1, 2010) (in patent case asserting claims against “unrelated and competing defendants for their own independent acts of patent infringement,” dismissing all but first named defendant for misjoinder). Thus, this Court may dismiss Facebook from this suit or sever the claim asserted against it, pursuant to Rule 21.

13 Determination of infringement and remedies will be fact specific to each defendant. *See*
14 *Spread Spectrum Screening, LLC v. Eastman Kodak Co.*, No. 10 C 1101, 2010 WL 3516106,
15 at *2 (N.D. Ill. Sept. 1, 2010). Facebook’s products or services accused of infringement of U.S.
16 patent No. 6,757,682 (the “’682 patent”)¹ are distinct from those products or services of the other
17 defendants accused of infringement of the ’682 patent, as well as distinct from those products or
18 services of other defendants accused of infringement of the three additional patents-in-suit.
19 Further, Interval did not allege that any coordination or common action by Defendants resulted in
20 infringement. Finally, presentation of evidence of the other defendants’ accused products or
21 services and financial information, in particular when presented amidst additional patents not
22 relevant to Facebook, would be prejudicial to Facebook at trial.²

23 ¹ As set forth in Defendant Facebook, Inc.’s Joinder in Defendants Google, Inc. and YouTube,
24 LLC’s Motion to Dismiss for Failure to State a Claim upon Which Relief Can Be Granted
25 Pursuant to Fed. R. Civ. P. 12(b)(6), filed concurrently with this motion, and Google’s Motion to
26 Dismiss (D.I. 62), the complaint does not set forth any accused products or services. However,
all of Facebook’s products and services are distinct from the products and services of the other
Defendants.

²⁷ Facebook concurs that coordination or consolidation of discovery, particularly for claim construction and validity purposes, may be employed to preserve judicial efficiency and party resources, and does not object to this Court hearing any re-filed case against Facebook.

III. CONCLUSION

2 For the foregoing reasons, and for the reasons discussed in Google’s Motion to Sever,
3 Facebook respectfully joins Google’s Motion to Sever and requests that the Court dismiss
4 Facebook from this case, or sever the claims against it, because joinder of the defendants here is
5 improper.

6 DATED this 22nd day of October, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2010, I electronically filed the following document(s):

**DEFENDANT FACEBOOK, INC.'S JOINDER IN DEFENDANTS GOOGLE INC. AND YOUTUBE, LLC'S
MOTION TO DISMISS OR SEVER FOR MISJOINDER PURSUANT TO FED. R. CIV. P. 20 AND 21** with
the Clerk of the Court using the CM/ECF system, which will send an email notification of such
filing to the attorney(s) of record listed below.

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